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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/712,285

11/13/2003

Wamis Singhatat

ZL 0195

9330

23367 7590 06/10/2008

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LINVATEC CORPORATION
11311 CONCEPT BOULEVARD
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EXAMINER

NEAL, TIMOTHY J

ART UNIT

PAPER NUMBER

3731

MAIL DATE

DELIVERY MODE

06/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/712,285	Applicant(s) SINGHATAT, WAMIS	
	Examiner Timothy J. Neal	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-12,14,15,19-22 and 24-26 is/are pending in the application.
- 4a) Of the above claim(s) 22 and 24-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-12,14,15,19-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to the amendments and the Request for Continued Examination received on 12/10/2007.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 6-12, 14, 15, and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Schwartz et al. (US 6,293,961).

Schwartz discloses a distal body portion (20, distal portion), a proximal body portion (24) with opposed gripping portions (36 and 37) defining a suture receiving aperture (30) transverse to the longitudinal axis, a channel (22), the anchoring member includes an annular ring (distal most portion of 20 is an annular ring), a locking mechanism (36 and 37 portions that lock into each other, also disclosed are multiple teeth and grooves, one set could be the gripping portions and another set the locking mechanism), and in the open position the proximal portion is non-circular and is circular in the closed position (figure 9). The locking mechanism contains a male/female engagement mechanism (figure 9). The suture anchor is bioabsorbable (Column 2

Lines 25-31). The suture has two ends and the second end is receivable in the aperture in the open position. A loop is formed as seen in figure 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartz '961.

The Examiner considers Schwartz to anticipate the claims as stated above. However, because the particular shape of the device is not necessarily clear, the Examiner is providing an alternative rejection. The claims are drawn to the shape of the device, which is generally not considered to differentiate an application over the prior art. The Examiner considers the Schwartz to contain three options for the cross-sectional shape of the proximal body portion when in the open and closed positions. Either the proximal portion is oval in the open position and circular in the closed position or the proximal portion is circular in the open position and oval in the closed position or the proximal portion is oval in both positions. One having ordinary skill in the art would be able to modify the device to either of these configurations without changing the effect of the device. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Schwartz's device to include the

shape as claimed. Such a modification is not considered to be non-obvious to a person of ordinary skill.

Response to Arguments

Applicant's arguments filed 12/10/2007 have been fully considered but they are not persuasive.

The Applicant has argued that the Schwartz device is totally unlike the claimed invention because of how the claimed invention is used. The desired use of the claimed invention is only part of the claim. Schwartz's gap is capable of receiving a suture transversely. Therefore, the claim limitation is anticipated. The Applicant does not specifically claim the suture being transversely secured through the aperture. The Examiner notes that Schwartz's suture does go through the transverse gap as seen in figure 9. The Examiner has relied primarily on figure 9, which clearly shows the locking mechanism as claimed. The Applicant points to figures 1-8 without addressing figure 9. The Examiner notes that Schwartz discloses multiple embodiments, not all of which read on the claims. Figure 9 includes the gripping portion 36 and 37 and is specifically addressed by the Examiner. Because the Applicant has failed to point out any deficiencies in this figure, the Examiner is maintaining the rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy J. Neal whose telephone number is (571) 272-0625. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TJN

/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3731